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AS

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/887,847 07/03/97 BAYCHAR

? BAY-210

EXAMINER

IM22/0619

FAY SHARPE BEALL FAGAN
104 EAST HUME AVENUE
ALEXANDRIA VA 22301

SINGH, A
ART UNIT

PAPER NUMBER

18

1771
DATE MAILED:

06/19/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/887,847

Applicant(s)

Baychar

Examiner
Ms. Arti R. Singh

Art Unit
1771



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE filed on 06/04/2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7, 8, 10, 11 and 13-26 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-18 is/are allowed.
- 6) ☒ Claim(s) 1 and 19 is/are rejected.
- 7) ☒ Claim(s) 2-5, 7, 8, 10, 11, 13, and 19-26 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:

- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____.
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 18) ☒ Interview Summary (PTO-413) Paper No(s). 18
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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DETAILED ACTION

Request for Continued Examination

1. The Examiner has carefully considered Applicant's remarks filed in the RCE on 06/04/01. Applicant's amendment to the beginning of the specification has been entered and the objection to this has been withdrawn. At this time in the prosecution the pending claims are 1-5, 7, 8, 10, 11 and 13-26, of which claims 14-18 have been indicated as allowable subject matter. Independent claims 1 & 19 stand rejected and all the other dependant claims, i.e. 2-5, 7, 8, 10, 11, 13 and 20-26 are objected to. The previously made rejection made under USC 35 §102 has been changed to a 35 USC § 103 rejection and is stated below.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 & 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogden (US 5,727,336). Ogden teaches an insole made of a plurality of layers. In figures 8 and in columns 11-13 Ogden shows that his insole may be made of a top layer which has apertures, to which is attached a nonwoven layer, to this is attached a cushiony urethane foam, to which is affixed an adhesive net material (a scrim), which the Examiner equates to be the same layers which Applicant claims. The Ogden reference does not specifically state whether or not the resilient foam layer is an open or closed cell foam, yet still suggests that the laminate as a whole has the capabilities of moisture wicking and absorbing. The Examiner takes the position that it would have been obvious to a person having ordinary skill in the art at the time the invention was

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made to have employed an open cell foam as the foam layer in the laminate. One would have been motivated to do this as to provide the desired properties of absorbency and permeability throughout the laminate.

Response to Arguments

4. Applicant's arguments filed on 06/04/2001 have been fully considered but they are not persuasive. In response to Applicant's arguments that a sponge rubber is not an open cell foam is incorrect. After running a simple search having the terms "sponge rubber " and "open cell foam" within the same sentence the Examiner came up with over 500 references. Sponge rubbers can be ***either*** an open or a closed cell foams, it all depends upon the properties required by the foam itself. In fact how a foam (its cellular structure) is to be used all depends on the method of making the foam, if an open mold is used then you'll get an open celled foam, and if a closed mold used you'll get a closed cell foam. Hence it all depends on what properties are required to be performed by the foam layer itself. Since permeability is desired, it would have been obvious to have used an open cell foam as a closed cell foam would hinder this requirement.

5. Any inquiry regarding this communication or earlier communications from the Examiner should be directed to Arti Singh, whose telephone number is (703) 305-0291. The Examiner can normally be reached Monday through Friday from 8 AM to 5 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor Mr. Terrel Morris, can be reached at (703) 308-2414. A Facsimile center has been established in Group 1700 on the 8th floor of Crystal Plaza 3. The hours of operation are Monday through Friday 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machine is (703) 305-5408. This location should be used in all instances when faxing any


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correspondence to Art Unit 1771. Use of the Group 1700 center will facilitate rapid delivery of materials to Examiners in Art Unit 1771.

Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-2351.



Ms. Arti Singh
Patent Examiner
Art Unit 1771
June 16, 2001



Mr. Blaine Copenheaver
Supervisory Patent Examiner
Technology Center 1700